

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CR-96-411 BB

ARTHUR CARTER CLINGMAN,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Defendant's motion to reduce sentence pursuant to 18 U.S.C. § 3582(c)(2) (Doc. 1818) filed June 21, 2005. Defendant claims that his sentence should be reduced under the Supreme Court's decision in *United States v. Booker*, --- U.S. ---, 125 S. Ct. 738 (2005). The motion will be denied.

Defendant's allegations do not support a claim for reduction of sentence under § 3582(c)(2). "A district court is authorized to modify a Defendant's sentence only in specified instances where Congress has expressly granted the court jurisdiction to do so." *United States v. Blackwell*, 81 F.3d 945, 947 (10th Cir. 1996), *quoted in United States v. Bedonie*, --- F.3d ----, ----, No. 04-4103, 2005 WL 1503891, slip op. at - (10th Cir. 2005). The statutory language invoked by Defendant is as follows:

The court may not modify a term of imprisonment once it has been imposed except that-- . . . in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. [§] 994(o), . . . the court may reduce the term of imprisonment.

§ 3582(c)(2). Here, Defendant makes no allegation that the Commission has lowered the sentencing range applicable to his offense. He argues that *Booker*'s rejection of "the preponderance of the evidence standard used to enhance his sentence . . . , in and of itself, can be taken as an amendment to the U.S.S.G." No doubt *Booker* has had a great impact on sentencings nationwide; nonetheless, the Commission did not lower Defendant's sentencing range, § 3582(c)(2), and no relief is available to Defendant under the statute, *see, e.g., Bedonie*, --- F.3d ----, ----, 2005 WL 1503891, slip op. at -.

IT IS THEREFORE ORDERED that Defendant's motion to reduce sentence pursuant to 18 U.S.C. § 3582(c) (Doc. 1818) filed June 21, 2005, is DENIED;

IT IS FURTHER ORDERED, in accordance with *United States v. Espinosa-Talamantes*, 319 F.3d 1245, 1246 (10th Cir. 2003), that Defendant is hereby NOTIFIED that a notice of appeal from an order denying a motion under 28 U.S.C. § 3582(c) must be filed within ten days after entry of the order.


UNITED STATES DISTRICT JUDGE